92-246

No. _____

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1992

SMA LIFE ASSURANCE COMPANY,
PETITIONER,

v.

ANTONIO SANCHEZ PICA,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1 Does a federal court have the power, prior to entry of its judgment, to enjoin simultaneous *in personam* proceedings in a state court or agency seeking to litigate the same issues pending before the federal court?

2. Should the party seeking an order to protect or effectuate a federal judgment in its favor be penalized for having first attempted to avoid the more intrusive remedy of injunctive relief?

3. Does the failure to seek an order enjoining state proceedings prior to entry of a federal court judgment constitute a waiver of the prevailing party's right to protection and effectuation of the federal court judgment?

4. Is the traditional showing of irreparable injury a prerequisite to the issuance of an injunction to protect or effectuate a federal court judgment?

PARTIES TO THE PROCEEDINGS IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

The parties to the proceedings in the Court of Appeals are:

SMA Life Assurance Company as plaintiff, appellant, and Antonio Sanchez Pica as defendant, appellee.

The petitioner, SMA Life Assurance Company, is a wholly-owned subsidiary of SMA Financial Corp., which in turn is a wholly-owned subsidiary of State Mutual Life Assurance Company of America. The petitioner has no subsidiaries.

All of the entities named below are affiliates of the petitioner as wholly or partially-owned subsidiaries of the parent corporation, State Mutual Life Assurance Company of America, and its subsidiaries: 440 Financial Group of Worcester, Inc., Allmerica Funds, Allmerica Investment, Inc., Allmerica Investment Services, Inc., Allmerica Investment Management Company, Inc., Allmerica Investment Trust, American Select Insurance Company, AMGRO, Inc., Beacon Insurance Company of America, Citizens Management Inc., Citizens Insurance Company of America, Group Healthcare Network, Inc., Hanover American Insurance Company, Hanover Atlanta, Inc., Hanover Chicago, Inc., Hanover Connecticut, Inc., Hanover Kansas City, Inc., Hanover Lloyd's Insurance Company, Hanover Louisiana, Inc., Hanover Management Company of New Hampshire, Inc., Hanover Metro, Inc., Hanover New England, Inc., Hanover of Florida Management Company, Inc., Hanover of Maine, Inc., Hanover Richmond, Inc., Hanover Sacramento Insurance Management Company, Inc., Hanover St. Louis, Inc., Hanover Syracuse, Inc., Hanover Texas Insurance Management Company, Inc., Hanover Tulsa, Inc., Hanover Valley Forge, Inc., Logan Wells Water Company, Inc., Massachusetts Bay Insurance Company, The Hanover Insurance Company, and Wachusett Vista, Inc.

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OPINIONS DELIVERED IN COURTS BELOW

The opinion of the United States Court of Appeals for the First Circuit is reported at 960 F.2d 274 (1st Cir. 1992), and copied in the appendix to this petition. The opinions of the United States District Court for the District of Puerto Rico giving rise to this matter are reported at 764 F. Supp. 7 (D.P.R. 1991) and 771 F. Supp. 15 (D.P.R. 1991). The opinions of the district court are copied in the appendix to this petition.

STATEMENT OF JURISDICTION

Petitioner seeks review of a judgment of the United States Court of Appeals for the First Circuit entered on April 6,

1992, in case number 91-1981 entitled *SMA Life Assurance Company* v. *Antonio Sanchez Pica*. A timely petition for rehearing filed by petitioner herein was denied by the Court of Appeals by order entered on May 7, 1992. The order of the Court of Appeals denying the petition for rehearing is copied in the appendix to this petition.

This Court has jurisdiction to review the judgment of the Court of Appeals by writ of certiorari by virtue of 28 U.S.C. § 1254(1) (1988).

STATUTES INVOLVED IN THIS CASE

28 U. S. Code, Section 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment.

STATEMENT OF THE CASE

Basis For Federal Jurisdiction In The Court Of First Instance

On July 29, 1990, petitioner, SMA Life Assurance Company (hereinafter referred to as "SMA"), a Delaware corporation with principal office in the Commonwealth of Massachusetts, filed a complaint invoking the diversity jurisdiction of the United States District Court for the District of Puerto Rico, against respondent, Antonio Sanchez Pica (hereinafter referred to as "Sanchez"), a citizen of the Commonwealth of Puerto Rico. The matter involved a contractual dispute regarding the validity of an insurance policy issued by SMA in favor of Sanchez. The liability of SMA under the policy and the amount in controversy exceeds $50,000.00 exclusive of interest and costs. 28 U.S.C. § 1332 (1988).

Proceedings In The Federal District Court

The complaint of SMA sought rescission of a certain disability policy issued by SMA to Sanchez (the "policy"). SMA alleged that it had issued the policy relying on the representations made by Sanchez in his application for insurance which did not reveal Sanchez' full medical history. SMA further alleged that subsequent to the issuance of the policy it discovered that the statements of Sanchez in the application were material misrepresentations in that Sanchez had failed to disclose a certain medical condition material to the risk assumed by SMA in issuing the policy. The contention of SMA was that it would not have issued the policy had Sanchez disclosed and SMA known of Sanchez' full medical history.

Before attempting service, counsel for SMA wrote to Sanchez on August 13, 1990, apprising him of the filing of the federal court action, the specific grounds on which SMA sought to rescind the policy, offering to dismiss the complaint and refund the premiums paid theretofore by Sanchez. The offer of SMA was conditioned upon Sanchez agreeing to the rescission of the policy by signing and returning to SMA the appropriate document on or before August 25, 1990. Sanchez did not respond. On September 26, 1990, Sanchez was served personally with the summons and copy of the complaint.

Sanchez failed to respond to the complaint and his default was entered on October 30, 1990. On November 26, 1990, the federal district court entered judgment by default in favor of SMA and against Sanchez. The judgment decreed the rescission of the policy, ordered SMA to return to Sanchez all premiums paid and interest thereon, and released SMA from further liability under the policy. In compliance with the federal judgment, SMA, on December 11, 1990, mailed to Sanchez its check in the amount of $3,509.09 covering premiums refunded and interest thereon, which check was accepted and cashed by Sanchez. Sanchez did not appeal from the judgment of the district court and has never sought relief therefrom.

PARALLEL ADMINISTRATIVE PROCEEDINGS COMMENCED BY SANCHEZ

Instead of defending the federal court action, and after receiving notice of the filing of said action, Sanchez proceeded to file an administrative complaint with the Puerto Rico Insurance Commissioner (the "Commissioner"). The administrative complaint sought to enjoin SMA from rescinding the policy. Notice of the administrative complaint was received by SMA from the Commissioner after Sanchez had been served with the summons and copy of the federal court complaint. On November 5, 1990, SMA responded to the administrative complaint requesting that the same be dismissed on the grounds that: (a) the matter involved a contractual dispute over which the Commissioner lacked jurisdiction; and (b) an action involving the same controversy had been filed first and was pending before the federal district court.

On December 12, 1990, SMA gave notice to the Commissioner of the entry by the federal district court of judgment rescinding the policy and requested the dismissal of the administrative complaint now on the ground of res judicata. An informal hearing or conference of the parties with the Chief of the Division of Complaints of the Office of the Commissioner was subsequently held. At said hearing or conference SMA did not defend the merits of the administrative complaint but reiterated its requests that the same should be dismissed for lack of jurisdiction and on the ground of res judicata.

On March 15, 1991, the Chief of the Division of Complaints issued an order directing SMA to reinstate the policy rescinded by the judgment of the federal district court. The order, in the form of a letter addressed to Sanchez, did not recognize the res judicata effect of the federal judgment because "it is a judgment by default, it is not a judgment entered after a trial on the merits, before a jury", and "the Federal Court, with deference to the administrative agency, should have ordered [SMA] to consult [the Commissioner] first."

REQUEST BY SMA FOR AN ORDER TO PROTECT OR EFFECTUATE THE FEDERAL JUDGMENT

On April 19, 1991, SMA moved the federal district court for an order enjoining the Commissioner from enforcing the order of the Chief of the Division of Complaints directing SMA to reinstate the policy rescinded by the federal judgment. SMA further requested that Sanchez be enjoined from relitigating the matter adjudicated by the federal judgment. Sanchez did not oppose SMA's request.

On May 24, 1991, the federal district court entered an order denying SMA's request for injunctive relief. The court agreed with SMA that the federal judgment constituted res judicata, and that the matter and the issues sought to be litigated by Sanchez before the Commissioner were the same as those adjudicated by the federal judgment. Notwithstanding the above, and even though it recognized that it had jurisdiction to issue the injunction, the district court refused to do so relying on "the principles of equity, comity and federalism". The district court also concluded that SMA had failed to show that it would suffer irreparable injury if the injunction did not issue and that there was no other remedy at law.

SMA timely moved for reconsideration. As grounds therefor, SMA alleged that unless the federal district court issued the requested injunction, SMA would suffer irreparable injury and would be left without an adequate remedy at law since the time to request administrative review of the order of the Chief of the Division of Complaints had expired. SMA contended that an attempt to pursue administrative review of the order of the Chief of the Division of Complaints, and probably judicial review by the Commonwealth courts, could have been construed as a waiver by SMA of the finality of the federal judgment. SMA further argued that in the event that the Commonwealth courts ultimately were to uphold the decision of the Chief of the Division of Complaints, SMA would be barred from taking the matter back to the federal district court for appropriate relief under

the norm set forth in *Parsons Steel* v. *First Alabama Bank*, 474 U.S. 518 (1986). SMA also contended that the traditional showing of irreparable injury is not required in a case in which a party petitions a federal court for an injunction to protect or effectuate its judgment.

The federal district court refused to reconsider, stating or suggesting that SMA had delayed in seeking federal court intervention, and that SMA should have pursued the administrative remedies and judicial review in the Commonwealth courts to set aside or vacate the order of the Chief of the Division of Complaints. The court implied, however, that the injunction might not have issued even if SMA had filed its request for an injunction earlier.

On appeal, the Court of Appeals affirmed, holding that the district court had not acted improperly in denying injunctive relief. The Court of Appeals in effect held that SMA had delayed seeking relief from the federal district court and that SMA should have requested the issuance of an injunction as soon as it received notice of the administrative proceedings even though, at that time, the proceedings in the federal district court had not concluded and judgment had not been entered yet.

Both the district court and the Court of Appeals made factual conclusions which are not based on evidence in the record, nor are these conclusions factually correct. The details are not discussed in this petition, but are reserved for presentation should certiorari be issued.

ARGUMENT

Reasons Justifying Issuance Of Writ

Petitioner contends that this petition should be granted for the following reasons:

1. The Court of Appeals has rendered a decision in conflict with decisions of other Courts of Appeals.

2. The Court of Appeals has decided a federal question in a way that conflicts with applicable decisions of this Court.

3. The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

The Standard Set By The Court Of Appeals Misapprehends The Appropriate Grounds For Denying Issuance Of An Order To Protect Or Effectuate A Judgment

The United States Court of Appeals for the First Circuit has rendered a decision which is in conflict with the decisions of the United States Courts of Appeals for the Second and Seventh Circuits on the subject of the appropriate grounds for denying issuance of an injunction to protect or effectuate a federal judgment. The decision appears to be in conflict with the decisions of this Court on the issue of whether a federal court may enjoin parallel state court proceedings on the same cause of action prior to the entry of judgment by the federal court.

"That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled." *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 239 (1934). The basic question here is whether a federal court abuses its discretion by refusing "to protect those who have obtained its decree against an effort to force relitigation of the same causes of action in the state courts [or administrative agencies]", *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118, 141-42 (1941) (Reed, J., dissenting), and whether "a federal judgment . . . comes to nothing that is final" and "[i]t is to be only the basis for a plea of res judicata which is to be examined by another court, unfamiliar with the record already made, to determine whether the issues

were or were not settled by the former adjudication." *Id.*, 314 U.S. at 144.[1]

The basis for the decision of the Court of Appeals in the instant case denying issuance of an order enjoining relitigation was the purported delay of petitioner, SMA, in seeking protection of the federal judgment in its favor. The Court of Appeals intimated that SMA had relinquished its vested federal right by not having moved the federal district court for an order staying the administrative proceedings upon having received notice of said proceedings. At the time that SMA received notice of the administrative proceedings, the federal district court had not yet entered judgment.

The Court of Appeals determined here in effect that a party waives its right to seek federal relief by attempting to persuade the state court or administrative agency not to entertain a claim seeking to relitigate the same cause of action already adjudicated by a federal judgment. Or, as the Second Circuit stated in *Amalgamated Sugar Co.* v. *NL Industries*, 825 F.2d 634 (2d Cir.), *cert. denied, sub nom.*, *Rothenberg* v. *Amalgamated Sugar Co.*, 484 U.S. 992 (1987), by "attempting to avoid invoking the more intrusive remedy of injunctive relief." 825 F.2d at 642. The Court of Appeals found that SMA relinquished its vested federal right because it requested from the Commissioner the dismissal of the administrative complaint prior to

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[1] In the *Toucey* case this Court interpreted the scope of the Anti-Injunction Act, 28 U.S.C. § 2283 (1948), in a case coincidentally also involving the rescission of a disability insurance contract. At the time of the decision in *Toucey*, the Anti-Injunction Act did not contain an explicit relitigation exception. Justice Frankfurter, in delivering the opinion of the Court, stated the issue presented in said case as follows: "Does a federal court have power to stay a proceeding in a state court simply because the claim in controversy has previously been adjudicated in the federal court?" 314 U.S. at 126. Raising some of the same policy grounds given by the federal district court in its order denying issuance of the injunction in this case, Justice Frankfurter answered for this Court in the negative. 314 U.S. at 141. Persuaded by Justice Reed's dissenting opinion, Congress subsequently amended the Anti-Injunction Act to specifically include the relitigation exception. *Commerce Oil Refining* v. *Miner*, 303 F.2d 125, 127 (1st Cir. 1962).

seeking an order from the federal district court staying the state agency proceedings. Contrary to all inferences made by both the district court and the Court of Appeals, the only activity that took place at the office of the Commissioner prior to SMA's request for a federal court injunction was an informal hearing or conference with the Director of the Division of Complaints of the Office of the Commissioner at which SMA reiterated its request for the dismissal of the action on the grounds of lack of jurisdiction and of res judicata. SMA subsequently received copy of a letter from the Chief of the Complaints Division addressed to Sanchez which stated that "we are of the opinion" that SMA must reinstate the policy notwithstanding the federal court judgment. It appearing that an injunction to stay the proceedings was unavoidable, SMA went back to the federal court to request protection of the judgment in its favor. There was never a final order of the Commissioner or a Commonwealth court ruling on the issue of the res judicata effect of the federal judgment.

The standard adopted and applied by the Court of Appeals here conflicts with the decisions of the Second and Seventh Circuits which decided that the issuance of an injunction to protect or effectuate a judgment was proper in similar circumstances.

In *Amalgamated Sugar Co.* v. *NL Industries*, 825 F.2d 634, plaintiff, the party seeking to enjoin relitigation of the issues adjudicated by the federal judgment, participated in the state proceedings and filed a motion for summary judgment on the ground that the matter constituted res judicata. The state court denied the motion without prejudice. Leave to take an interlocutory appeal was also denied. Plaintiff then moved in federal court to stay the state court proceeding. The federal court issued the injunction. On appeal defendant argued inter alia that by filing its motion for summary judgment, plaintiff "waived its right to seek relief in federal court" and that "the district court should have abstained from interfering with the state proceeding". 825 F.2d at 638-39. The Court of Appeals for the Second Circuit affirmed stating that plaintiff "acted properly in mov-

ing for summary judgment on res judicata grounds in the New Jersey court prior to seeking injunctive relief in the district court, thereby attempting to avoid invoking the more intrusive remedy of injunctive relief." 825 F.2d at 642. In *Amalgamated* substantial activity had taken place in the state court prior to the request by plaintiff for federal relief.

In *Samuel C. Ennis & Co.* v. *Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977) (hereinafter "*Ennis*"), plaintiffs sought an order enjoining a state court from relitigating issues decided by a federal court. The federal district court refused to stay the state court proceedings and plaintiffs appealed. The Court of Appeals found no merit in the defenses of waiver and estoppel.

> Appellees argue that, by filing a motion to dismiss in the state court (which that court has not ruled on, so far as we are advised) and delaying one year in bringing this action, appellants have waived, or are estopped from asserting, their right to federal relief. There is no indication of an intent to relinquish the federal right, and therefore there is no waiver. Nor has there been the reasonable and detrimental reliance on the delay that would be required to establish an estoppel.

542 F.2d at 48.

The basic query of whether there was an intention to relinquish the federal vested right, as more fully articulated by the Second and Seventh Circuits in *Amalgamated* and *Ennis*, is not a factor under the standard set by the First Circuit in the case at bar. The standard indiscriminately denies protection to a party who has obtained a federal judgment in its favor. The only criterion for issuance of an injunction to protect or effectuate a judgment appears to be simply whether there was a lapse of time from the entry of judgment to the request for injunctive relief.

The decision sought to be reviewed here is also in conflict with the decision of the Court of Appeals for the Second and Seventh Circuits in that it completely ignores the exigencies and circumstances of the case. *Amalgamated* and *Ennis* hold or suggest that the circumstances of the case, particularly the conduct of the parties, are important factors to be considered in determining whether an injunction should issue. In *Amalgamated* the Court made this clear in rejecting the argument that the party seeking injunctive relief had waived its right. The Court further said that "[t]he only suggestion of waiver that occurred in this case can be attributed to [the defendant] who, although he monitored the federal litigation closely, chose not to intervene in the litigation". 825 F.2d at 642.

Similarly, in *Ennis*, the Court pondered the factual posture of the case to resolve that there had been no waiver of the right to federal relief and that there had been no "reasonable and detrimental reliance on the delay [in requesting injunctive relief] that would be required to establish an estoppel." 542 F.2d at 48.

The norm adopted by the Court of Appeals in the case at bar not only ignores the circumstances of the case but sets a standard favorable to those parties who endeavor to deprive the successful litigant of "the fruits and advantages of a judgment or decree rendered" by a federal court. *Local Loan Co.* v. *Hunt*, 292 U.S. at 239. The standard set by the Court of Appeals here in effect rewards a party who has acted in clear defiance of a valid federal judgment in a transparent attempt to divest the federal court of jurisdiction. The decision of the Court of Appeals does not permit a lower court to consider whether the party sought to be enjoined has acted in bad faith and the multiplicity of unnecessary and protracted proceedings that the action of a disgruntled and defiant litigant is likely to cause.

The decision of the Court of Appeals does not allow consideration of important facts which bear on the propriety of an order enjoining the administrative proceedings, to wit:

a. the federal cause of action by SMA was filed *prior* to the commencement by Sanchez of the administrative proceedings;

b. the administrative complaint by Sanchez was filed subsequent to and as a direct result of the federal action filed by SMA;

c. Sanchez disregarded the federal court proceedings and collaterally attacked the validity and finality of the federal judgment at his own pace and in the wrong forum;

d. Sanchez accepted and cashed the check of SMA representing refund of the premiums in compliance with the federal judgment which he has utterly disregarded;

e. Sanchez has clearly acted in bad faith in initiating and prosecuting his claim in the administrative proceedings.

THE DECISION OF THE COURT OF APPEALS CREATES AN ADDITIONAL EXCEPTION TO THE ABSOLUTE PROHIBITION OF THE ANTI-INJUNCTION ACT AND FAILS TO HEED THE INSTRUCTIONS OF THIS COURT ON THE SUBJECT

In affirming the refusal of the district court to protect its own judgment, the Court of Appeals states here that "it was therefore not inappropriate for the district court to base its refusal of an injunction in part on its finding that 'the Commonwealth [of Puerto Rico] courts are well qualified to protect SMA from the effect of the administrative decision by properly applying the doctrines of res judicata and collateral estoppel when judicially reviewing the same.' " 960 F.2d at 277. The statement and the norm inferred therefrom foreclose any attempt by a successful federal litigant to seek protection of a judgment in its favor. The Court of Appeals disregarded SMA's argument that had it pursued review of the order of the Chief of the Division of Complaints in the Commonwealth courts, and were the latter ultimately to uphold the order in question, SMA would be barred from taking the matter back to the federal district court for appropriate relief under the norm set forth in *Parsons Steel* v. *First Alabama Bank*, 474 U.S. 518 (1986). While recognizing that *Parsons* created a problem for SMA, the Court of Appeals said

that "[o]ne solution to that problem might have been for SMA to promptly request an injunction from the federal court once SMA received the Commissioner's notice." 960 F.2d at 278.

The implication of the statement that SMA could or should have moved to enjoin prosecution of the simultaneous administrative proceedings prior to the entry of judgment by the federal court conflicts with the decisions of this Court in *Atlantic Coast Line* v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), and *Vendo Co.* v. *Lektro Vend Corp.*, 433 U.S. 623 (1977). Both the federal district court and the Court of Appeals agreed that the Anti-Injunction Act did not bar issuance of the injunction in this case. Nevertheless the interpretation given to the Act by the courts below accords neither with the text of the Act nor with its interpretation by this Court. Under the standard set by the Court of Appeals in this case, a party must move immediately to stay simultaneous state proceedings if it is to preserve its right to seek later on federal relief. In other words, the Court of Appeals has set the norm that a request for an order enjoining prosecution of simultaneous *in personam* state proceedings is a prerequisite to the issuance of a permanent injunction. This norm is in conflict with *Atlantic Coast* where this Court held that

> any injunction against state court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory exceptions to [28 U.S.C.] § 2283 if it is to be upheld. Moreover since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court.

398 U.S. at 287. There is no exclusion in the Act permitting a federal court to stay a simultaneous *in personam* proceeding in a state court on the same cause of action absent a final order or judgment of the federal court to be protected or effectuated. The suggestion that SMA could have requested an injunction prior to the entry of a final judgment fails to heed the instruction of this Court that "the Act is an absolute prohibition against any injunction of any state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions in the Act." *Vendo*, 433 U.S. at 630. The additional exception now created by the Court of Appeals in this case is a "loose statutory construction" that would impair the "fundamental constitutional independence of the States and their courts", *Atlantic Coast*, 398 U.S. at 287. The additional exception created by the Court of Appeals is also clearly contrary to the decision of this Court that "*in personam* actions in federal and state court may proceed concurrently, without interference from either court. . . ." *Vendo*, 433 U.S. at 642.

THE DECISION OF THE COURT OF APPEALS SETS AN INFLEXIBLE RULE AGAINST ENJOINING STATE PROCEEDINGS WHICH QUESTION HAS NOT BEEN COMPREHENSIVELY ADDRESSED BY THIS COURT

The decision of the Court of Appeals sanctioned the refusal of the district court to enjoin the administrative proceedings on grounds of comity and federalism. Reliance by the federal district court on the principles of comity and federalism, absent compelling state interests, constituted an impermissible detraction of the vested federal rights of SMA. The decision further disregards the ruling of this Court in *Pennzoil* v. *Texaco*, 481 U.S. 1, 11 (1987) (Abstention of federal courts is mandated in certain civil proceedings "if the State's interests in the proceedings are so important that exercise of the federal judicial power would disregard the comity between the State and the National Government."). The Court of Appeals has de facto ruled that

the principles of comity and federalism impose an inflexible rule precluding a federal court from staying state civil proceedings even in those cases in which there is no compelling state interest that could be disrupted by the issuance of the injunction. The matter also presents an important question of federal law upon which this Court has had no occasion to rule heretofore. *Cf. Trainor* v. *Hernndez*, 431 U.S. 434, 444 n.8 (1977).

The standard set by the Court of Appeals fails to distinguish the nature of the case and factors to be considered by lower courts in determining whether the principles of comity and federalism preclude an order enjoining state proceedings. The Court assumed the existence of a state interest of compelling importance. The underlying controversy in the case at bar is a contractual dispute between two private litigants regarding misrepresentations made by Sanchez in his application for the insurance policy issued by SMA. There is no compelling state interest in prosecuting the administrative action brought by Sanchez. Likewise, there is no federal-state relation to be disrupted here by the issuance of the injunction enjoining the administrative proceedings. The only parties affected by said injunction would and will be SMA and Sanchez, both of whom had the opportunity to present their respective cases in court. The order of the Chief of the Division of Complaints sought to be stayed by SMA was not and is not even an order of the Commissioner or a final decree of the Office of the Commissioner.[2]

The inflexible rule against enjoining state proceedings adopted by the Court of Appeals in this case further constitutes an impermissible abdication of the federal courts' power and

[2] The Chief of the Division of Complaints improperly asserted jurisdiction over the matter notwithstanding the fact that this is a purely contractual controversy between the insurer and the insured. The fact that the Office of the Commissioner lacks jurisdiction to entertain and adjudicate contractual disputes has been acknowledged and resolved heretofore by the Office of the Commissioner in at least one other case. The issuance of an injunction to protect or effectuate the federal judgment in favor of SMA will not, under any conceivable situation, disrupt the programs, policies and regulatory functions of the Commissioner and of the Commonwealth of Puerto Rico.

duty to resolve controversies. Indiscriminate abdication of this duty has been rejected by this Court in *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185 (1959) (hereinafter, "*Allegheny*"). Even though the question presented in *Allegheny* was whether the federal district court had the discretion to abstain from the exercise of its jurisdiction in the circumstances of that case, the principle relied upon in *Allegheny* is applicable here by analogy:

> The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.

360 U.S. at 188-89. The duty of a federal court to exercise its discretion to issue an injunction such as that requested here is more compelling when the matter deals with the enforcement of its own judgment, entered unopposed and with unquestionable jurisdiction. As the Fifth Circuit correctly assessed:

> In other words, before our deference to federalism can justify deviation from routine federal procedures—be they exercises of jurisdiction or the protection of rights garnered in federal judgments—we must confront a significant disruption of federal-state relations.

Southwest Airlines Co. v. *Texas Intern. Airlines*, 546 F.2d 84, 92 (5th Cir.), *cert. denied*, 434 U.S. 832 (1977). "[N]othing would be as productive of friction between the state and federal courts as to permit a state court to interpret and perhaps to upset such a judgment of a federal court." *Jacksonville Blow Pipe Co.*

v. *Reconstruction Finance Corp.*, 244 F.2d 394, 400 (5th Cir. 1957). The concern of the Court of Appeals and of the federal district court about the principles of comity and federalism would be best served by issuance of the injunction that "prevents multiple litigation of the same cause of action and . . . assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review." *Woods Exploration & Prod. Co.* v. *Aluminum Co. of America*, 438 F.2d 1286, 1312 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972).

This case offers the opportunity to establish a definitive and uniform rule regarding the applicability of the judicial restraint norm set in *Younger* v. *Harris*, 401 U.S. 37 (1971), to all types of civil litigation, and to amplify the criterion established in *Pennzoil* v. *Texaco*, 481 U.S. 1.

THE STANDARD SET BY THE COURT OF APPEALS REQUIRING THE TRADITIONAL SHOWING OF IRREPARABLE INJURY IS AN INAPPROPRIATE PREREQUISITE TO THE ISSUANCE OF AN ORDER TO PROTECT OR EFFECTUATE A JUDGMENT

By affirming that part of the decision of the district court that concluded that SMA had failed to show that it would suffer irreparable injury, the Court of Appeals has set the standard that the traditional showing of irreparable injury and adequate remedy at law is a prerequisite to the issuance of an injunction to protect or effectuate a judgment. The matter involves an important question of federal law which has not been, but should be, settled by this Court.

The decision of the Court of Appeals sets a standard more stringent for the issuance of injunctions to protect a federal judgment in those situations where the Anti-Injunction Act does not bar the issuance of the injunction than in those cases where the Anti-Injunction Act governs. SMA contends that there is no such prerequisite in cases in which a party petitions the court for

an injunction "to protect or effectuate its judgment" under 28 U.S.C. § 2283 (1948). This was intimated by the same Court of Appeals in *Wulp* v. *Corcoran*, 454 F.2d 826 (1st Cir. 1972), citing *Ex Parte Young*, 209 U.S. 123 (1908):

> The federal anti-injunction statute, 28 U.S.C. 2283, by its terms, applies only to proceedings that have been instituted in a state court at the time the federal suit is brought. Federal intervention at that point is limited to three sets of circumstances: (1) "as expressly authorized by Act of Congress"; (2) "where necessary in aid of [the court's] jurisdiction"; and(3) "to protect or effectuate [the court's] judgments." *Courts have also recognized a fourth exception justifying intervention in such cases, i.e., where there has been an adequate showing of "irreparable injury". See, e. g., Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L.Ed. 714 (1908). The Court undertook principally in *Younger* v. *Harris* and its companion cases, . . . to reemphasize the narrow scope of the latter exception.

454 F.2d at 831 n.5 (emphasis added). The fact that a federal court may enjoin a state court proceeding under the fourth judicially acknowledged exception to the anti-injunction statute makes clear that a showing of irreparable injury is not required under the first three exceptions to the statute, including the so-called "relitigation exception". Plainly, if a traditional showing of irreparable injury were required for an injunction to issue under the three statutory exceptions to section 2283, the fourth judicially acknowledged exception to the anti-injunction statute would render the three statutory exceptions superfluous. Additionally, if Congress had already intended to incorporate a showing of irreparable injury as a precondition for injunctive relief under the three statutory exceptions to section 2283, it would be impossible to reconcile a fourth judicially recognized exception, for irreparable injury alone, with the aforementioned Congressional intent.

CONCLUSION

The decision of the Court of Appeals for the First Circuit setting standards for the issuance of an injunction to protect or effectuate a judgment conflicts with the decisions of other courts of appeals on the same subject, to wit, the Courts of Appeals for the Second and Seventh Circuits which decided that the issuance of an injunction to protect or effectuate a judgment was proper in circumstances similar to those presented in this case. *Samuel C. Ennis & Co.* v. *Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977); *Amalgamated Sugar Co.* v. *NL Industries*, 825 F.2d 634, 642 (2d Cir.), *cert. denied, sub nom.*, *Rothenberg* v. *Amalgamated Sugar Co.*, 448 U.S. 992 (1987). The decision also conflicts with the ruling of this Court in *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185 (1959), regarding the impermissible abdication of a federal court's jurisdiction, and wrongly resolves important questions of federal law, to wit, that the *Younger* principle of comity and federalism in effect applies to all types of civil litigation even when there is no compelling state interest involved. Finally, the decision resolves that the traditional showing of irreparable damage is a prerequisite to the issuance of an injunction to protect or effectuate a federal judgment, a question which has not been, but should be, settled by this Court.

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APPENDIX A

United States Court of Appeals
For the First Circuit

No. 91-1981

SMA LIFE ASSURANCE COMPANY,
PLAINTIFF, APPELLANT,

v.

ANTONIO SANCHEZ-PICA,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[HON. CARMEN C. CEREZO, *U.S. District Judge*]

Before

Breyer, *Chief Judge*,
Feinberg,* *Senior Circuit Judge*,
and Selya, *Circuit Judge*.

Frank Gotay-Barquet with whom *Feldstein, Gelpi & Gotay* and *Ralph Diller* were on brief for appellant.

April 6, 1992

*Of the Second Circuit, sitting by designation.

FEINBERG, *Senior Circuit Judge.* This appeal raises the issue of whether a federal district court abused its discretion in refusing to enjoin a local administrative agency proceeding so as to preclude relitigation of a matter previously determined by a default judgment in the district court. Plaintiff SMA Life Assurance Company (SMA) appeals from two orders of the United States District Court for the District of Puerto Rico, Carmen Consuelo Cerezo, J. The first order denied SMA's motion to protect or effectuate an earlier default judgment that rescinded an insurance policy issued by SMA to defendant Antonio Sanchez Pica (Sanchez), and the second order denied SMA's motion for reconsideration of the first order. Sanchez offered no defense in response to SMA's motion and was apparently unrepresented. In this court, SMA contends that the district court erred in refusing to issue an injunction effectuating its earlier judgment and asks us to vacate and remand with specific instructions to enjoin proceedings before the Commissioner of Insurance of Puerto Rico (the Commissioner) and to enjoin appellee Sanchez from relitigating the matter adjudicated by the district court. Sanchez did not file a brief on appeal or participate in the oral argument.

I. *Background*

The case has an unusual procedural background. In July 1990, SMA sued Sanchez in the district court, seeking rescission of Sanchez's disability income insurance policy on the ground that he had not disclosed his full medical history in his application. As already indicated, Sanchez did not respond to the complaint. On November 26, 1990, the district court granted a default judgment in favor of SMA and against Sanchez, rescinding the insurance policy, ordering SMA to return to Sanchez all premiums paid and interest on the premiums, and releasing SMA from any further liability under the policy.

Unknown to the district court, however, even though Sanchez did not defend himself in the federal court, he was ac-

tively pursuing an administrative remedy against SMA. While SMA's federal cause of action was pending, SMA received a notice and order from the Commissioner dated September 28, 1990, enclosing a copy of an administrative complaint filed by Sanchez with the Commissioner, complaining of SMA's attempts to rescind the policy and seeking to enjoin such action by SMA. On November 5, 1990, SMA filed a response to the administrative complaint with the Commissioner, asking that the complaint be dismissed on the grounds that the Commissioner lacked jurisdiction and that an action adjudicating the same issues was already pending in federal district court. After obtaining a default judgment in the district court a few weeks later, SMA filed a supplementary response to the administrative complaint and renewed its request for dismissal, this time on the ground of res judicata as a result of the district court's judgment in SMA's favor.

In February 1991, the Commissioner held an administrative hearing at which evidence was presented. In March 1991, the Commissioner, through the Chief of the Complaints Division (Deputy Commissioner), issued a decision denying SMA's request to dismiss Sanchez's administrative complaint, concluding that the Commissioner did have jurisdiction and finding the doctrine of res judicata inapplicable. The decision ordered SMA to reinstate Sanchez's policy upon receipt from him of the premiums (which had already been refunded by SMA pursuant to the district court judgment). SMA did not seek available administrative or judicial review of this decision.

In April 1991, SMA moved in the district court for an order to protect or effectuate its earlier judgment. The relief sought by SMA included, among other things, an order enjoining the Commissioner from enforcing the order directing policy reinstatement. In an opinion dated May 24, 1991, Judge Cerezo denied the motion. Thereafter, SMA moved the district court to reconsider its earlier judgment. In an opinion dated August 9, 1991, the judge denied this motion as well. This appeal followed.

II. Discussion

A. *Res judicata*

Appellant SMA devotes a substantial portion of its brief to the argument that the federal court's original judgment constituted a final judgment with res judicata effect even though it was a default judgment. That proposition is correct. *See, e.g., Riehle* v. *Margolies*, 279 U.S. 218, 225 (1929) and *Hazen Research, Inc.* v. *Omega Minerals, Inc.*, 497 F.2d 151, 154 (5th Cir. 1974), cited by appellant. *See also Rhode Island Hosp. Trust Nat'l Bank* v. *Ohio Casualty Ins. Co.*, 789 F.2d 74, 81 n.10 (1st Cir. 1986). SMA argues that the Commissioner therefore erred in finding that res judicata did not apply and that the district court should not have deferred to the Commissioner's judgment.

The flaw in this argument is that the district court did not affirm the Commissioner's conclusion regarding res judicata as an appellate court might affirm a ruling of a lower court. What the district court did was to refuse to enjoin the agency proceeding, in spite of the fact that the agency's decision was — according to the district court — "plainly inconsistent with our prior judgment." The question before us is therefore not whether the local administrative agency was correct in its determination that res judicata principles did not apply. What we must decide is whether Judge Cerezo had the power to refrain from enjoining the local administrative proceeding and, if she did, whether she committed legal error in refusing to issue an injunction.

B. *Enjoining state proceedings*

SMA asserts that "[t]he fundamental question here is whether a federal court has power to stay a proceeding in a state agency because the claim in controversy has previously been adjudicated in the federal court." Although we do not share SMA's position that this is the fundamental question here, we agree that

federal courts do have the power to protect their judgments. *See Fauci* v. *Hannon*, 275 F.2d 234, 238 (1st Cir.), *cert. denied*, 363 U.S. 811 (1960). While the Anti-Injunction Act, 28 U.S.C. § 2283, normally precludes a federal court from enjoining state court proceedings, the Act provides an exception for those cases in which an injunction is necessary to effectuate a judgment of the federal court and prevent the relitigation of issues that the federal court has already decided. *Id.* Appellant justifiably cites *Amalgamated Sugar Co.* v. *NL Indus. Inc.*, 825 F.2d 634 (2d Cir.), *cert. denied*, 484 U.S. 992 (1987), as an example of this exception.

In rendering her decision, Judge Cerezo was aware of this exception to the Anti-Injunction Act. Indeed, the judge believed that the Anti-Injunction Act did not apply to this case, since an administrative proceeding and not a state *court* proceeding was at issue. While the Supreme Court has left the issue open, see *Gibson* v. *Berryhill*, 411 U.S. 564, 573 n.12 (1973), the appellate courts seem to agree that the Act applies only to state courts. *See, e.g., Kerr-McGee Chem. Corp.* v. *City of West Chicago*, 914 F.2d 820, 824 (7th Cir. 1990); *American Motors Sales Corp.* v. *Runke*, 708 F.2d 202, 204 (6th Cir. 1983); *Engelman* v. *Cahn*, 425 F.2d 954, 958 (2d Cir. 1969), *cert. denied*, 397 U.S. 1009 (1970). It is clear, therefore, that Judge Cerezo did not feel constrained by the Anti-Injunction Act from effectuating her earlier ruling: she knew that she had the power to grant an injunction. Nevertheless, she chose not to exercise that power, asserting correctly that "[t]he fact that an injunction may issue . . . does not necessarily mean that it must issue automatically," citing *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 151 (1988). In order to be successful here, SMA must persuade us that the judge's refusal to enjoin the local administrative proceeding was an abuse of discretion. *See Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.* v. *Massachusetts Water Resources Auth.*, 935 F.2d 345, 350 (1st Cir. 1991) (en banc).

C. *Reasons for Denying the Injunction*

In her first decision, Judge Cerezo cited the principles of equity, comity, and federalism as the primary reason for her decision to deny SMA's motion. These are familiar and established principles that have animated the Supreme Court's decisions in *Younger* v. *Harris*, 401 U.S. 37, 43-44 (1971), and other cases that have subsequently extended the *Younger* abstention doctrine beyond state criminal proceedings. *See, e.g., Juidice* v. *Vail*, 430 U.S. 327, 335 (1977); *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 607 (1975). When a federal court enjoins state proceedings, at whatever level, it disrupts the delicate balance of power between the state and federal systems, and it should have a substantial justification for doing so.

In this case, the dispute is over an insurance contract. The dispute came to federal court because of the diversity of citizenship of the parties. We have recognized in insurance coverage actions, that a district court, asked to stay its hand, may regard as significant the pendency of parallel state proceedings and the absence of "federal issues." *Liberty Mut. Ins. Co.* v. *Foremost-McKesson, Inc.*, 751 F.2d 475, 476-77 (1st Cir. 1985). It was therefore not unreasonable for the district court to trust the state system to handle the matter at hand.

The district court cited an additional factor informing its decision: SMA's failure to meet the standard for granting preliminary injunctions, which requires a showing of irreparable harm and the inadequacy of alternative remedies. *See Wulp* v. *Corcoran*, 454 F.2d 826, 831 n.5 (1st Cir. 1972). SMA responds that it need not meet this standard to empower the court to enjoin the proceedings at issue. Whether or not a federal court *must* apply this standard, however, the Supreme Court has explicitly approved of its application under similar circumstances. In *Younger*, for example, in holding that federal courts may not enjoin pending state court criminal proceedings, Justice Black specifically referred to "the basic doctrine of equity jurisprudence that court of equity should not act . . .

when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." 401 U.S. at 43-44. It was therefore not inappropriate for the district court to base its refusal of an injunction in part on its finding that "the Commonwealth [of Puerto Rico] courts are well qualified to protect SMA from the effect of the administrative decision by properly applying the doctrines of res judicata and collateral estoppel when judicially reviewing the same."

In her second opinion, which denied SMA's motion for reconsideration, Judge Cerezo relied, in addition, on the considerable activity that had already taken place at the agency prior to SMA's request for a federal court injunction. When SMA received from the Commissioner the September 28, 1990 notice of Sanchez's complaint against SMA, it did not promptly move in the district court for injunctive relief. Nor did SMA even inform Judge Cerezo of the pending administrative proceeding before it applied for, and obtained, a default judgment on November 26, 1990. Instead, SMA argued res judicata to the Commissioner and waited for the Commissioner to rule on this question before moving for an injunction in the federal court in April 1991.

Under the Full Faith and Credit Act, 28 U.S.C. § 1738, as construed by *Parsons Steel, Inc.* v. *First Alabama Bank*, 474 U.S. 518, 524 (1986), had the decision on res judicata been issued by a state court rather than by a state agency, SMA would have been barred from obtaining relief from the federal court. Although the Full Faith and Credit Act does not require deference to an agency's res judicata determination that precedes state court review, the Supreme Court has expressed approval for such deference where state administrative proceedings were of an adjudicative nature. *See University of Tennessee* v. *Elliott*, 478 U.S. 788, 797, 798-99 (1986); *United States* v. *Utah Constr. Co.*, 384 U.S. 394, 422 (1966) ("When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated

to apply *res judicata* to enforce repose.") *See also*, *Pagan-Hernandez* v. *University of Puerto Rico*, 107 D.P.R. 795, 804 (1978). We certainly cannot say that when Judge Cerezo denied the injunction, she erred in taking into account the administrative proceedings that had already taken place and SMA's six-month delay in seeking relief in the federal court after learning of Sanchez's complaint to the Commissioner.

SMA argues that if it had utilized its administrative remedies and then sought judicial review in the Puerto Rican court, it would have thereby lost its right to seek the intervention of the district court. It is true that in *Parsons*, the Supreme Court made clear that:

> Even if the state court mistakenly rejected respondents' claim of res judicata, this does not justify the highly intrusive remedy of a federal-court injunction against the enforcement of the state-court judgment. Rather, the Full Faith and Credit Act requires that federal courts give the state-court judgment, and particularly the state court's resolution of the res judicata issue, the same preclusive effect it would have had in another court of the same State. Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from this Court.

474 U.S. at 525. We agree that *Parsons* created a problem for SMA. One solution to that problem might have been for SMA to promptly request an injunction from the federal court once SMA received the Commissioner's notice. Whatever Judge Cerezo might have done under those circumstances, that is not the course SMA followed.

SMA also complains that now it is no longer possible for it to seek state court review of the Commissioner's determination because the time to do so has expired. However, as the district court noted in its second opinion, "it was plaintiff [SMA] who,

by choice, created the situation allegedly constituting irreparable injury and inadequate remedy at law" by failing to appeal the agency's judgment in a timely fashion and belatedly moving instead in the federal court to grant an injunction. We agree with the district court that SMA's inability to utilize state court procedures, which was caused by its own failure to act, is not a persuasive ground for granting SMA injunctive relief here.

We have considered all of SMA's arguments and find them to be without merit. We hold that on this record the district court did not act improperly in denying injunctive relief. We therefore affirm.

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 91-1981

SMA LIFE ASSURANCE COMPANY,
PLAINTIFF, APPELLANT,

v.

ANTONIO SANCHEZ PICA,
DEFENDANT, APPELLEE.

BEFORE

BREYER, *Chief Judge*,
FEINBERG,* *Senior Circuit Judge*,
and TORRUELLA, SELYA and CYR, *Circuit Judges*.

ORDER OF COURT

Entered: May 7, 1992

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for the holding of a rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeal be heard or reheard by the Court en banc,

It is ordered that the petition for rehearing and the suggestion for rehearing en banc be denied.

By the Court:
FRANCIS P. SCIGLIANO
Clerk

*Of the Second Circuit, sitting by designation.

[cc: Messrs. Gotay-Barquet and Sanchez-Pica]

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL 90-2019CCC

SMA LIFE ASSURANCE COMPANY,
PLAINTIFF,

v.

ANTONIO SANCHEZ-PICA,
DEFENDANT

ORDER

Presently before us is plaintiff's SMA Life Assurance Company's (SMA) Motion for an Order to Protect or Effectuate the Judgment (docket entry 9). As shown by the record, this action was first filed on July 26, 1990 (docket entry 1) and judgment by default was entered in favor of plaintiff on November 26, 1990 (docket entry 6). However, it now appears that while defendant Antonio Sanchez-Pica (Sanchez) failed to defend against the proceeding brought against him in this Court, he actively made use of the local administrative proceedings, filing an administrative complaint against SMA in the Office of the Insurance Commissioner of the Commonwealth. The end result of this situation was that two different forums actually addressed and adjudicated the claims of the parties relating to the same issue in dispute: the right to rescind a disability insurance policy issued by SMA in favor of Sanchez. This Court was the first one to issue a decision, ordering the rescission of the mentioned policy (*see* docket entry 6). Notwithstanding, in the administrative proceeding a different result was reached, as the Office of the Insurance Commissioner ordered on March 15, 1991 the reinstatement of the policy in question. Although

SMA alleged as a defense in the administrative proceeding that the agency was bound by the previous ruling of this Court under principles of res judicata, the agency expressly refuted this argument.

Faced with this adverse decision, SMA has once again returned to plead its cause before this Court, but this time to seek an order enjoining the Insurance Commissioner from enforcing its mandate. Mindful of the extraordinary relief requested, SMA has been cautious to stress that such a remedy is necessary to preserve the Court's authority to resolve controversies. It has also persuasively argued that the issuance of the requested injunction is not expressly barred by the Anti-Injunction Act, 28 U.S.C. §2283. As we recognize that the principles of equity, comity and federalism are of utmost relevance to the issue now before us, we now carefully consider the matter.

We agree with SMA that the Anti-Injunction Act does not serve as a bar to the issuance of an injunction in this instance. As SMA has correctly pointed out, the clear language of the statute[1] only prohibits federal courts from enjoining state *court* proceedings, but not administrative proceedings such as the one held by the Insurance Commissioner. *See American Motors Sales Corp.* v. *Runke*, 708 F.2d 202, 204 (6th Cir. 1983). Even though we are conscious of the fact that the Supreme Court has left open the question of whether the Anti-Injunction Act applies to state administrative proceedings which are clearly adjudicatory, *see Gibson* v. *Berryhill*, 411 U.S. 564, 573, 93 S.Ct. 1689, 1695 (1973), we equally note that the matter has still not been squarely decided. Accordingly, we cannot find that the Act applies to the facts of this case.

Even if we were to assume, for the sake of argument, that the Act is indeed applicable to administrative proceedings, we

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[1] The statute reads:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

similarly find that it would not serve as an impediment to the granting of injunctive relief. Pursuant to what has come to be known as the "relitigation exception" to the Act, which allows injunctions of state proceedings "to protect or effectuate" federal judgments, an injunction could certainly be issued in this instance to avoid the relitigation of the matters that have been finally decided by this Court. *Texas Employers' Ins. Ass'n* v. *Jackson*, 820 F.2d 1406, 1416 (5th Cir. 1987).

The fact that an injunction may issue, however, does not necessarily mean that it must issue automatically. *See Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 151, 108 S.Ct. 1684, 1692 (1988). As previously intimated, the principles of equity, comity and federalism oblige federal courts to act with great restraint. *Mitchum* v. *Foster*, 407 U.S. 225, 243, 92 S.Ct. 2151, 2162 (1972); *De Cosme* v. *Sea Containers, L.T.D.*, 874 F.2d 66, 68 (1st Cir. 1987). In this instance, in which SMA is asking us to enjoin the enforcement of a decision rendered by a local administrative agency after it had conducted an adjudicatory hearing, where it was represented by able counsel, who properly raised the defense of res judicata which was finally rejected by the agency after entering its findings of fact and conclusions of law, we think that these principles are of great relevance. To be sure, SMA has failed to meet the equitable requirements of irreparable injury and inadequate remedy at law that must be shown before an injunction issues. In addition, we note the applicability of the general rule that provides that when an action is pursued until the entry of a final decision inconsistent with a prior judgment, the second decision ordinarily prevails whether the res judicata effects of the first judgment were ignored by the parties or expressly rejected by the decision-maker in the second action. Wright, Miller and Cooper, *Federal Practice and Procedure: Jurisdiction* §4404, p. 26 (1981).

We believe that the particular circumstances of this case do not justify a departure from this general rule. Finally, we feel confident that the Commonwealth courts are well qualified to protect SMA from the effects of the administrative decision by

properly applying the doctrines of res judicata and collateral estoppel when judicially reviewing the same. Accordingly, firmly convinced that the issuance of an injunction is not a proper remedy in this instance, we decline to order its entry. SMA's motion in that regard is hereby DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on May 24, 1991.

s/ CARMEN CONSUELO CEREZO

CARMEN CONSUELO CEREZO
United States District Judge

5/CS TO: F. GOTAY-BARQUET
OB.

5-30-91
WG

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL 90-2019CCC

SMA LIFE ASSURANCE COMPANY,
PLAINTIFF,

v.

ANTONIO SANCHEZ-PICA,
DEFENDANT

ORDER

Before the Court is SMA Life Assurance Company's (SMA) Motion for Reconsideration of our Order of May 24, 1991 which denied a previous request for the issuance of an injunction against the Commissioner of Insurance of Puerto Rico. Plaintiff vehemently requests that the injunction be issued, arguing that otherwise it "will suffer irreparable injury and will be left without an adequate remedy at law, since the time to request administrative review of the Order of the Insurance Commissioner expired."[1]

We restate the chain of events that lead to plaintiff's latest petition. On July 26, 1990 plaintiff filed a complaint before this Court seeking rescission of a disability insurance policy which it had issued to defendant. Since defendant failed to contest the allegations, judgment by default was entered in favor of plaintiff on November 26, 1990.[2] Meanwhile, the defendant had

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[1] *See* Motion for Reconsideration of Order, docket entry 13, p. 2, par. 4.

[2] The record reflects that the judgment was signed on November 26, 1990, filed on November 27, and docketed on November 30, 1990. As the various dates are of no relevance here, no issue having been raised regarding the timeliness of any post-judgment proceeding, we make reference only to the date the judgment was first signed.

chosen to litigate the matter before the Office of the Commissioner of Insurance of Puerto Rico, the local administrative agency in charge of regulating the insurance business. Upon his filing of a grievance before its complaints division, SMA promptly answered the same on November 5, 1990. On December 12, 1990, just days after a final judgment was entered in this case, SMA decided to file a motion to dismiss alleging res judicata in the administrative proceeding.

The administrative proceeding continued its course. The parties were notified of a hearing to be held on February 5, 1991 and continued until February 20, 1991. Based on the evidence presented at that hearing, the Office of the Commissioner of Insurance entered an order on March 15, 1991. The agency expressly rejected SMA's claim that the judgment entered by this Court precluded defendant's proceedings before it and concluded that the doctrine of res judicata was not applicable. It ordered that SMA was to reinstate the policy and provided that "[a]ny party that deems itself prejudiced by this determination that precedes has the right to request reconsideration of the same . . . within the term of twenty (20) days from the date of its notice."[3]

It was not until April 19, 1991, more than a month after the conclusion of the administrative proceedings and nearly five months after the entry of judgment by default in this action, that plaintiff first filed its motion for an order to protect or effectuate that last judgment. The motion was denied based on considerations of equity, comity and federalism. Noting that the motion had been filed after the administrative agency had rejected plaintiff's res judicata defense and proceeded to enter its final order, we observed the possible application of the "general rule that provides that when an action is pursued until the entry of a final decision inconsistent with a prior judgment, the second decision ordinarily prevails whether the res judicata effects of the first judgment were ignored by the parties or

[3] *See* docket entry 9, exhibit 6, p. 3, and its certified translation appearing in docket entry 11, exhibit 9, pp. 2-3.

expressly rejected by the decision-maker in the second action." *See* Order of May 24, 1991, docket entry 12, p. 4. In addition, given SMA's active participation in all stages of the adjudicatory procedure conducted by the administrative agency, we assumed it had sought judicial review of the adverse decision. We expressed our confidence in the Commonwealth courts' capacity to protect plaintiff "from the effects of the administrative decision by properly applying the doctrines of res judicata and collateral estoppel when judicially reviewing the same." *Id.*

Plaintiff has returned to this Court to claim that the issuance of an injunction is its only availabe remedy since the time to request review of the Order of the Commissioner of Insurance has expired. It deliberately failed to request administrative reconsideration and, consequently, judicial review in the Commonwealth courts, in order to "rely on the finality and conclusiveness of the federal judgment by promptly seeking injunctive relief from this Court." *See* docket entry 13, p. 3, ¶4.

Insofar as plaintiff attempted to procure this Court's intervention in the administrative proceeding by terminating the state judicial process prematurely, foregoing state judicial review in order to attack the insurance commissioner's order in federal court, its action constituted an improper use of this Court's jurisdiction which we do not sanction. It seems clear that under these circumstances it was plaintiff who, by choice, created the situation allegedly constituting irreparable injury and inadequate remedy at law upon which it now bases the request for injunctive relief. As an injunction is certainly not an available remedy when the alleged irreparable injury is caused by the party that seeks relief, this situation alone constitutes sufficient cause to dismiss the request. *See generally San Francisco Real Estate* v. *Real Estate Invest.*, 692 F.2d 814, 818 (1st Cir. 1982).

There is a stronger consideration that militates against the issuance of the injunction. Plaintiff moved for the issuance of the injunction only after the administrative agency had concluded all the proceedings before it, after having actively liti-

gated the matter there, and even when it had a judgment in its favor issued by this court since November 1990. A quasi-judicial proceeding was conducted in the administrative agency as plaintiff was properly notified of the action filed against it, was adequately represented by an attorney, filed memoranda of law in support of its claim, was afforded a hearing where it had the right to present evidence on its own behalf and to rebut evidence presented by defendant, received a decision in which the findings of fact and conclusions of law of the adjudicator were clearly stated, and later had the opportunity to contest those findings by seeking reconsideration of the decision and by appealing to the Commonwealth courts. *See generally* Puerto Rico Administration Procedure Act, 3 L.P.R.A. §§2151-2177. It was in the midst of this procedure that plaintiff then invoked the doctrine of res judicata, which was later rejected by the administrative law judge when rendering a decision plainly inconsistent with our prior judgment. Under these circumstances, we deem applicable the generally known rule that provides that when an action is pursued until entry of a final decision inconsistent with a prior one, the second decision ordinarily prevails even when the res judicata effects of the first were rejected by the decision-maker in the second action. Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* §4404, p. 26 (1981 & Supp. 1991). After all, administrative decisions must be given res judicata effect when the agency rendering the decision "is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an opportunity to litigate." *United States* v. *Utah Construction Co.*, 384 U.S. 394, 422, 86 S.Ct. 1545, 1560 (1966).

Plaintiff contends that pursuant to the Supreme Court's decision in *Parsons Steel* v. *First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768 (1986), any attempt on its behalf to pursue a rehearing of the administrative order, or to seek review by the Commonwealth courts, "could have been construed as a waiver of the finality of the federal judgment." *See* docket entry 13, p. 3, ¶5. It further alleged that ". . . in the event that the Common-

wealth courts were to ultimately uphold the decision of the Insurance Commissioner, SMA would be barred from taking the matter back to this Court for appropriate relief." *Id.*

Although *Parsons* is not squarely applicable to the facts of this case, we note its relevance to the situation before us in one important respect: its holding that any attempt to seek a federal order to protect or enforce a federal judgment is meritless once the state court has considered and finally rejected a claim of res judicata. In such situations, according to *Parsons*, the provisions of the Full Faith and Credit Act, 28 U.S.C. §1738, bar a federal court from enjoining a state action in order to protect a prior federal judgment. In *Parsons*, the Court was specifically called upon to construe the Full Faith and Credit Act in light of the relitigation exception to the Anti-Injunction Act, 28 U.S.C. §2283, and in doing so concluded that the harmonization of both statutes required the federal courts' use of the relitigation exception only in "those situations in which the state court has not yet ruled on the merits of the res judicata issue." *Parsons*, 474 U.S. at 525, 106 S.Ct. at 772. Once a state court concludes, however, that a prior federal court judgment does not constitute res judicata and the state court enters judgment, the Full Faith and Credit Act becomes applicable. The federal court must then look to state law to determine the preclusive effect of the state court's decision, particularly the state court's resolution of the res judicata issue. The Court found that "[e]ven if the state court mistakenly rejected respondent's claim of res judicata, this does not justify the highly intrusive remedy of a federal-court injunction against the enforcement of the state-court judgment" and "[c]hallenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be persued by way of appeal through the state court system and certiorari from this court." *Parsons*, at 772-773.

Although we recognize that the Full Faith and Credit Act does not require federal courts to grant preclusive effect to a state agency determination that has not been judicially re-

viewed, *University of Tennessee* v. *Elliot*, 478 U.S. 788, 794, 106 S.Ct. 3220, 3224, we equally note that, in those instances where the Full Faith and Credit Act does not require preclusive effect, the federal courts may still apply res judicata and collateral estoppel under federal common law rules. *Id.* And, pursuant to the established rule previously mentioned, "... when a state agency 'acting in a judicial capacity ... resolves disputed issues of fact properly before it which the parties had an opportunity to litigate,' ... federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the state courts." *Id.* at 799, 106 S.Ct. at 3226. Although, under Puerto Rico law, it has been held that the doctrine of res judicata is to be applied with flexibility in the administrative context, *Pagan-Hernandez* v. *U.P.R.*, 107 D.P.R. 720, 735 (1978), this does not mean that the exception should be applied indiscriminately. *Stitzer* v. *University of Puerto Rico*, 617 F.Supp. 1246, 1259 (D.P.R. 1985). We see no reason why the doctrine of res judicata should not apply in this instance. Consequently, we conclude that, in this case, as in *Parsons*, an injunction based on the relitigation exception of the Anti-Injunction Act would not be appropriate.

We need go no further in our discussion.[4] For the reasons stated above,[5] plaintiff's motion for reconsideration of our

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[4] Two additional arguments were advanced by plaintiff in its motion, but these do not merit an extended discussion. In criticizing our previous ruling on this matter, plaintiff alleged that "the traditional showing of irreparable injury is not required in a case such as the instant one in which a party petitions the Court for an injunction 'to protect or effectuate its judgment' ". *See* docket entry 13, p. 4, ¶8. It also claimed that "reliance by the Court on the principles of comity and federalism to deny issuance of the requested injunction [was] misplaced." *Id.* at p. 5, ¶12. However, as explained by the Court of Appeals, "[i]n addition to the equitable requirements of irreparable injury and inadequate remedy at law that must be met before an injunction issues, the principles of comity and federalism are additional restraints against enjoining a state court proceeding". *De Cosme* v. *Sea Containers, Ltd.*, 874 F.2d 66, 68 (1st Cir. 1989). Accordingly, and without further ado, plaintiff's arguments are hereby dismissed.

[5] Our decision should not be read as suggesting that, had plaintiff filed its request for an injunction before the issuance of the final decision by the admin-

previous order dismissing its request for injunctive relief is hereby DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on August 9, 1991.

CARMEN CONSUELO CEREZO
United States District Judge

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istrative agency, the same would have been automatically granted. After all, an injunction is an extraordinary remedy, rarely available as a matter of right and never more extraordimary than when, if granted, it would prevent government officials from proceeding under a statute founded on important state interests, as such injunction would offend comity and federalism. Moreover, it is also generally recognized than an injunction will not be issued when the plaintiff has an adequate remedy at law, which it does if it can assert the ground on which he seeks an injunction as a defense to the very proceeding that the injunction would put a stop to. *See* Wright and Miller, Federal Practice and Procedure: Civil §2942, p. 378. *See also Porto Rico Tel. Co.* v. *Puerto Rico Communications Authority*, 189 F.2d 39 (1st Cir. 1951).